

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ENCAP, LLC,

Plaintiff,

v.

Case No. 11-C-685

THE SCOTTS COMPANY, LLC, et al.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART [96] DEFENDANTS'
MOTION TO COMPEL**

On February 24, 2014, Defendants The Scotts Company, LLC, The Scotts Miracle-Gro Company, LLC, and OMS Investments, Inc. (collectively, "Scotts"), filed a motion to compel Plaintiff Encap, LLC, to produce information and documents in response to Scotts' first set of interrogatories and document requests. After considering the parties' briefs and the arguments raised at the April 18, 2014 hearing, the Court hereby grants in part and denies in part Scotts' motion. The motion is granted in the following respects:

Encap is ordered to provide to Scotts within 30 days of this order: (1) a supplemental response to Interrogatory #13 which specifically identifies Encap's alleged trade secret and provides the other information requested; (2) a supplemental response to Interrogatory #1 which specifies the type of infringement Encap alleges for each claim; (3) a supplemental response to Interrogatory #7 which identifies all responsive, non-privileged communications; (4) a detailed privilege log; (5) a detailed explanation of Encap's ESI and document production protocol (i.e. its protocol for locating

and selecting relevant documents); (6) documents from 2003 or earlier that are responsive to Scotts' requests for document production, if available. This includes Scotts' request, as modified at the hearing, for Encap to produce documents concerning the product or products containing the ingredients listed in the 2001 MSDS.

The parties shall consult with one another to resolve any outstanding disputes related to the transfer of ESI. Encap shall also include in its electronic searches the search terms proposed by Scotts, or else provide reasons for its refusal to do so. The Court takes under advisement Scotts' request to award expenses and attorney's fees. In the meantime, Scotts is directed to provide to the Court and opposing counsel a reasonable estimate of the expenses it incurred in bringing the present motion. Scotts' motion is denied in all other respects.

SO ORDERED this 18th day of April, 2014.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court